United States Court of Appeals

for the Second Circuit

AMICUS BRIEF

~~NO. 75-4249~~

75-4249

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

[redacted]

INTERNATIONAL TERMINAL OPERATING CO., INC.
Petitioner

v.

CARMELO BLUNDO, Respondent
and DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS

On Petition for Review from the
Benefits Review Board
United States Department of Labor

BRIEF AMICUS CURIAE OF NATIONAL ASSOCIATION OF STEVEDORES

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P/S

9

TABLE OF CONTENTS

LIST OF AUTHORITIES

CASES

Statutes

Code of Federal Regulations

Miscellaneous

1. STATEMENT OF INTEREST OF AMICUS CURIAE

The National Association of Stevedores (hereinafter "NAS") is a nonprofit corporation incorporated on January 30, 1975 pursuant to the District of Columbia Non-profit Corporation Act, 29 D.C. Code 1001 et seq., for the purpose of promoting, furthering and supporting the stevedoring and marine terminal industry in the United States and its territories and possessions. It is the corporate successor to the unincorporated association of the same name organized in the District of Columbia in 1933. It has been given tax exemption rulings by both the Government of the District of Columbia and the Internal Revenue Service. Sec. 1005(b) of Title 29 of the District of Columbia Code specifically states that nonprofit corporations shall have power to sue and be sued, complain and defend, in its corporate name.

The present membership of the NAS comprises 52 private marine terminal and stevedore employers doing business in every major port on the nation's four seacoasts and the state of Hawaii. Based upon U.S. government man hour statistics for calendar year 1974 it is conservatively estimated that NAS member companies are responsible for over 60 percent of the industry's total man hours in all U.S. ports.

The member companies of the NAS employ the majority of U.S. dock and privately employed marine terminal labor, some of whom may be entitled to federal Longshoremen's and Harbor Workers' Compensation Act, 33 USC 901 et seq. (hereinafter the "LHWCA") and some of whom may be subject to state workers' compensation laws, depending upon their employment. The NAS

member companies are directly responsible for workers' compensation payments under both federal and state law either as self-insureds or through insurance carriers licensed by the U.S. Department of Labor or state insurance commissions.

Thus, the interests of the NAS and its member companies in the outcome of any litigation concerning the scope of benefits and jurisdiction of the federal government under the LHWCA is second to none, except the injured worker, and far surpasses that of the governmental entities which merely administer the statutes, state or federal.

LHWCA insurance costs, be it premiums paid to licensed carriers, or benefits paid directly to employees, are the second largest cost of a private marine terminal operator or stevedore company, exceeded only by direct payroll expenses. Thus, any decision by this or any other Court or administrative body as to which employee is entitled to federal LHWCA benefits and which is entitled to state compensation benefits, has a direct and substantial economic impact upon each and every member of the NAS. For these reasons, the NAS at its Annual Meeting held February 19 and 20, 1976 was authorized and directed by its member companies to appear on their behalf in all appropriate Courts until the industry-wide issue of state and federal jurisdiction in the matter of workers' compensation is finally resolved.

Accordingly, the NAS submits this brief amicus curiae to the Court for its consideration in the matters now pending before it.

2. QUESTIONS PRESENTED

The issues before this Court may be simply stated as:

(1) Where did the Congress in 1972 draw the line between federal LHWCA benefits and state workers' compensation laws and benefits? It is the same issue that confronted the Fourth Circuit Court of Appeals in the case of I.T.O. Corporation of Baltimore et al. v William T. Adkins et al. (Nos. 75-1051, 75-1075, 75-1196 and 75-1088) decided December 22, 1975 _____F.2d _____. It is the same issue that was before the First Circuit in the case of John T. Clark & Son of Boston, Inc. v William Stockman (No. 75-1360, argued January 5, 1976) and cases pending in other circuits. It is the same issue that was before the Ninth Circuit in Weyerhauser Company v Gilmore, (No. 74-3384) decided December 5, 1975 _____ F.2d _____, rehearing denied _____ F.2d _____, February 9, 1976.

(2) The second issue is - What was the injured man doing at the time of his injury, and what was he employed to do?

(3) The ultimate issue is - Was the injured "employee" performing the functions intended by Congress to be subject to federal LHWCA benefits at a location to which Congress extended the coverage of the LHWCA?

In short, do the status of the worker and the situs of the injury coincide within Congressional intent to entitle the injured worker to federal LHWCA benefits?

3. STATEMENT OF FACTS

These matters all involve appeals pursuant to section 21 of the Longshoremen's and Harbor Workers' Compensation Act [33 USC sec. 921 (b)(4)(c)] from adverse decisions of the Benefits Review Board, U.S. Department of Labor. In each case, briefly stated below, the Benefits Review Board found that persons engaged in on-shore transfer of cargo which had once been carried by a vessel were injured in the performance of "longshoring operations" handling cargoes still in "maritime commerce" and thus were entitled to federal LHWCA benefits. In each, we submit that the Benefits Review Board was in error.

(1) Mr. Carmelo Blundo

In the matter of International Terminal Operating Co., Inc. v Carmelo Blundo (No. 76-4249), the Benefits Review Board at 2 BRBS 376-380 found Mr. Blundo was injured while working as a checker with a crew of men stripping (unloading) a container at the 19th Street Pier of I.T.O. at Brooklyn, N. Y. The container had been unloaded from an unidentified vessel by employees of an unidentified employer (not I.T.O.) at an unspecified time and place, and brought by truck to the 19th Street Pier of I.T.O. The Benefits Review Board found the unloading of the truck delivered container to be a longshoring operation performed on cargo still in maritime commerce, even though it had been once moved by an inland carrier through the public streets of New York.

(2) Mr. Ralph Caputo

In the matter of Northeast Marine Terminal Co., Inc. v Caputo (No. 76-4009)

the uncontroverted facts in the words of the Benefits Review Board are:

> " The claimant (Caputo) was employed by Northeast Marine Terminal Company as 'terminal labor'. On the date of the injury the claimant was loading consignee's truck with cases of cheese discharged from a vessel five days earlier. These cases were being lifted into the back of the truck by a forklift and the claimant was moving them further into the truck on a dolly when he slipped and injured his foot.
>
> The work performed by the claimant here is the same whether performed the day the cargo arrives in port or weeks later."
> (3 BRBS 13 at 14 and 15 - emphasis supplied.)

The BRB found that (a) there was no vessel directly involved, (, Caputo was not employed as a longshoreman or member of the ship's gang, (c) Caputo was inside a truck, not in a vessel, and (d) his occupation was not related to maritime operations because his functions could have been performed weeks after the cargo was unloaded from the vessel. Thus, Caputo's only connection with the sea or maritime employment was the fact that at one time (here, some five days earlier) the goods which he was loading in a truck had once been in a vessel, and the truck was parked somewhere near where vessels are unloaded by persons other than Caputo.

(3) Mr. Frank Spataro

This Court also has before it the matter of Pittston Stevedoring Corporation et al. v Frank Spataro (No. 75-4220) appealing the short decision of the Benefits Review Board (BRB Nos. 75-130, 130A) 2 BRBS 122-124. According to the Benefits Review Board's extremely short statement of facts Mr. Spataro was injured while opening the door of a container at a loading platform some 25 feet from navigable waters on June 28, 1973. According to the Administrative Law Judge (1 BRBS 42) the cargo had been unloaded from the vessel some

23 days prior to the injury.

(4) Mr. Anthony Dellaventura

In the matter of Pittston Stevedoring Corp. et al. v Anthony Dellaventura (No. 76-4042), the Benefits Review Board at 2 BRBS 340-3 found that Mr. Dellaventura was loading coffee bags onto a truck some 133 days after the coffee bags had been unloaded from the ship. The BRB ruled that the coffee bags were still in maritime commerce despite their being on a pier some 133 days, and that the loading of the bags onto trucks was maritime employment. Therefore, the BRB found that Mr. Dellaventura was entitled to federal LHWCA benefits.

(5) Mr. John Scafiddi

In the matter of Pittston Stevedoring Corp. v John Scafiddi (No. 76-4043) the Benefits Review Board at 3 BRBS 47-50 found that Mr. Scafiddi was injured while moving a container to a receiving platform. Upon opening the door the container he was injured when a crate of cargo fell out of it. The BRB does not inform us as to when or how the container was unloaded from the vessel, if it was. Neither does the BRB say when the container was to be loaded on a vessel, if it was. However, since the injury occurred on marine terminal property the BRB found Mr. Scafiddi entitled to federal benefits under the LHWCA.

4. SUMMARY OF ARGUMENT

The NAS contends that the U.S. Department of Labor, the Benefits Review Board, the Solicitor of Labor, and the Director, Office of Workers' Compensation

Programs have misinterpreted the intent of Congress as expressed in the LHWCA itself and the applicable committee reports. The Department and each of its constituent offices have erroneously compelled stevedore and marine terminal employers to pay federal LHWCA benefits to workers not engaged in longshoring operations as defined by the Congress but to workers engaged in transportation functions not directly related to vessel loading or unloading.

The NAS contends also that for some undisclosed policy reason the Department not only chooses to ignore the statute and its legislative history, longstanding industry practices and procedures and the Department's own regulations, but also that the Department has elected to maintain its policy notwithstanding decisions of the Fourth Circuit Court of Appeals and the Ninth Circuit Court of Appeals to the contrary.

5. ARGUMENT

A. The 1972 Amendments to the LHWCA

In 1972, after several years of action, the Congress substantially amended the LHWCA by enacting PL 92-572 which, in addition to the amendments here in controversy, substantially increased benefits payable to eligible injured workers; eliminated the third party actions against vessels predicated upon seaworthiness; and declared void as against public policy indemnification agreements between stevedore and vessel owner. This Court is well aware of these aspects of the 1972 amendments, and has carefully considered them in its well reasoned decision in Landon v Lief Hoegh and Co., Inc. et al.,

(No. 74-2304 decided June 18, 1975) 521 F.2d 756 (CA2-1975). On November 21, 1975 the Ninth Circuit considered the same amendments and reached the same conclusions as the Second Circuit in the cases of Shellman v United States Lines, Inc. et al., Nos. 75-3071 and 75-3058, _____ F.2d _____, and Dodge v Mitsui Shintaku KK Tokyo et al., No. 75-1442, _____ F.2d _____. See also Lucas v "Brinknes" Schiffahrts Ges. 379 F. Supp. 759 (E.D. Pa. 1974) referred to in footnote 7 of the Landon opinion.

(1) A Jurisdictional Line Was Moved - In addition to the aforementioned amendments Congress also changed the statutory definitions of (a) "employee" [LHWCA sec. 902(3)] and (b) "employer" [LHWCA sec. 902(4)], and extended shoreward from the water's edge the situs of injuries for which federal LHWCA benefits could be paid to employees meeting the new definition of section 902(3) working for employers as defined in section 902(4).

Congress extended shoreward the jurisdictional line between federal and state compensation laws only for a certain specified type of employee. The questions are how far shoreward was the line moved, and for which employees. As the Ninth Circuit pointed out in Gilmore, supra (Slip Opin., pg. 6) prior to 1972 that line lay shipside at the water's edge - the so-called Jensen line. Southern Pacific Company v Jensen, 244 U.S. 205, 37 S. Ct. 527 (1917) and Nacirema Operating Co. v Johnson, 396 U.S. 212, 90 S. Ct. 347 (1969). The Fourth Circuit in Adkins, supra, (Slip Opin. pgs. 15-17) citing Nacirema Operating Co. v Johnson, supra agreed fully with the Ninth Circuit that a preexisting jurisdictional dividing line had been moved shoreward from

the water's edge, or shipside.

Thus, in amending section 3(a) of the LHWCA [33 USC 903(a)] Congress provided that in addition to the pre-1972 benefits being payable to "employees" for injuries occurring upon the navigable waters, compensation shall also be paid for injuries to "employees" occurring shoreside -

> " (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employee in loading, unloading, repairing or building a vessel)."

By amending the term "navigable waters" by the above quoted parenthetical insert, Congress moved the jurisdictional compensation line shoreward only to areas adjoining the "navigable waters" which are customarily used for vessel loading and unloading, or for vessel repairing or building. Congress did not extend the jurisdictional line to areas customarily used for the loading or unloading of motor vehicles or rail cars.

(2) Eligible Employees Were Redefined As Well - Prior to the 1972 amendments an "employee" was defined as anyone employed by an employer who was not a member of the vessel's crew, its master, nor any person engaged by the master to unload or load a vessel under eighteen tons net. Obviously, if the Congress had intended to extend the LHWCA benefits shoreward of the Jensen line to each and every "employee" of an "employer" Congress would not have amended the definition of "employee" as it then stood in section 902(3) of the LHWCA. But Congress did modify the definition of "employee" by adding the following limiting language:

> " [means] any person engaged in maritime employment, including any longshoreman, or other person engaged in longshoring operations, and any harbor worker including a ship repairman, shipbuilder, and ship breaker, "

One must look to other sources to ascertain exactly what the Congress intended. The first place to look is the legislative history of the Act itself, and particularly to the Committee Reports reporting out the legislation. This the Fourth Circuit did in Adkins, supra (Slip Opin., pg. 18) and the Ninth Circuit in Gilmore, supra (Slip Opin., pg. 5). So, too, must this Court, as it did in Landon, supra.

In the two Committee Reports, S. Rept. No. 92-1125, 92d Cong. 2d Sess. (1972) and H.R. Rept. 92-1441, 92d Cong. 2d Sess. 1972, 3 U.S. Code Cong. and Adm. News 4698, there is devoted but one full page of a report of over 60 pages to the subject of "Extension of Coverage to Shoreside Areas". The NAS agrees completely with the interpretations of Congressional intent announced by the Ninth Circuit in Gilmore, supra and the Fourth Circuit in Adkins, supra and submit that no other interpretation is reasonable under the circumstances. In Gilmore the Ninth Circuit stated (Slip Opin., pgs. 6-7):

> " The 1972 amended prerequisite of 'maritime employment' is a clearly expressed congressional perpetuation of the essential element of admiralty jurisdiction over the employee. In other words, the fixed federal compensation is provided in lieu of the uncertainty of a recovery by an injured ship worker for a maritime tort. The occupational hazards intended to be guarded against are the traditional hazards to the ship's service employee arising in the course of his employment; i.e., the perils of the sea and an unseaworthy vessel recognized under maritime laws. Accordingly we believe that to be entitled to the benefits of LHCA, an employee's employment must have a realistic relationship to the traditional work and duties of a ship's service employment. Otherwise the clear and unambiguous congressional language of 'maritime employment' is nullified and rendered to read 'any employment.'

> We hold that for an injured employee to be eligible for federal compensation under LHCA, his own work and employment, as distinguished from his employer's diversified operations, including maritime, must have a realistically significant relationship to 'traditional maritime activity involving navigation and commerce on navigable waters,' with the further condition that the injury producing the disability occurred on navigable waters as defined in Section 903. See Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249 (1972). See also Onley v. South Carolina Electric & Gas Company, 488 F.2d 758 (4th Cir. 1973), and Crosson v. Vance, 484 F.2d Section 40 (4th Cir. 1973)."

In effect there must be a nexus, some direct relationship, between the work being performed at the time of the injury and traditional maritime activity involving navigation and commerce on navigable waters. Pennsylvania Railroad Company v O'Rourke, 344 US 334, 73 S.Ct. 302 (1953), Nogueria v New York, N. H. & H. R. Co., 281 US 128, 50 S.Ct. 303 (1930). Clearly, like the log pond worker in Gilmore, truck loading, rail car loading, container stuffing, stripping, or repairing, etc.. are not so directly related.

But even more directly related to the cases at bar is the decision of the Fourth Circuit in Adkins, supra in which the Court placed the jurisdictional dividing line at the first "point of rest" for import cargoes, and the last "point of rest" for export cargoes. Unfortunately, the dissent in Adkins misinterpreted the majority holding, because in each of the eleven cases cited in Part V of Judge Craven's lengthy dissent the injured worker would have been entitled to federal LHWCA benefits after 1972 under the "point of rest" doctrine announced by the majority. Each injured worker in those cases was a part of the ship's gang performing his duties between the vessel and the "first" or "last point of rest". Thus, the dissent in Adkins, placed in its proper context with what the majority opinion held, is in agreement

with the "point of rest" doctrine and the cases cited by each are in fact not in conflict with each other. All that Congress did in the 1972 amendments was to extend LHWCA coverage across the water's edge to those "employees" who "would otherwise be covered by the Act for part of their daily activity on the navigable waters." (S. Rept. 92-1125 at pg. 13 and H. Rept. 97-1441 at pg. 10-11. Emphasis added.) It was not intended that LHWCA benefits be extended to those terminal and warehouse workers, none of whose daily activity is upon the navigable waters.

B. The Point Of Rest

Contrary to the assertions of some, the NAS did not invent the term "point of rest". It is a term long used in the stevedore/marine terminal industry and federal regulatory agencies, and is referred to in many labor-management contracts to define the dividing line between ship's gangs or deep sea workers (longshoremen) and terminal or warehouse workers (sometimes called "shortshoremen"). In some contracts the word "pile" is used instead of "point of rest" or place of rest. In actual practice the term "point of rest" means that place on the marine terminal facility where the ship's gang (longshoreman) delivers import cargo to the terminal or warehouse gang, and then returns to the vessel for more cargo. In the case of export cargo, the "point of rest" is the place where the ship's gang receives cargo from the terminal or warehouse gang to be then taken to the vessel, or shipside, for loading. It is the dividing line between stevedoring and terminal operations, the dividing line between longshoring and warehousing. (See for confirmation: Terminal Rate Increases.

Puget Sound Ports, 3 USMC 21 (1948); Truck and Lighter Loading and Unloading Practices at New York Harbor, 9 FMC 502 at 511-12 (1966); American President Lines, Ltd. v Federal Maritime Board, 317 F.2d 887 and 888 (CADC - 1972).

This is completely consistent with the Secretary of Labor's understanding of the term "longshoring operations" in 1972 in that Occupational Safety and Health Administration regulations in effect at the time [29 CFR 1918.3(1)] defined the term to mean:

> " the loading, unloading, moving or handling of cargo, ship's stores, gear, etc. into, in or out of any vessel on the navigable waters of the United States."

The Congress did nothing in 1972 to amend that definition, but in fact recognized that longshoring operations really terminated at the storage or holding area which the industry and the Fourth Circuit recognize as the "point of rest". The definition is also in complete accord with the then, and now, pertinent regulations of the Federal Maritime Commission's General Order 15 (46 CFR 533 et seq.) published in 1965.

Even to a layman a longshoreman is "one who is employed at a seaport to work at the loading and unloading of ships." Webster's Seventh New Collegiate Dictionary, G & C Merriam & Co., 1969. All authorities, both lay and expert, agree that longshoremen are employed to load and unload ships, and thus longshoring operations must only mean the process of loading or unloading ships or vessels. The place on the land where that process stops or starts is at the "point of rest". It is at that point that the maritime nature of the movement of goods ceases in the case of imports and inland transshipment begins. Conversely, for export cargo the inland movement ceases, and the maritime

portion of the journey commences.

Much has been made about the fact that neither Committee mentioned the term "point of rest" but instead used the term "storage or, holding area". The plain fact is that neither Committee heard testimony on the subject of shoreward extension as that subject was injected at the eleventh hour of the legislative process long after the primary intentions of the Committees discussed supra had been accomplished. However, it was immediately recognized that the Committee was discussing the "point of rest" as it is known throughout the industry and had been defined by the Federal Maritime Commission since 1965 in the Code of Federal Regulations.

The terms "longshoreman" and "longshoring operations" both relate to activities directly related to a vessel. So too, then, must the term "maritime employment" directly relate to a vessel, either in the handling of its cargo or its construction, repair or breaking. None of the aforementioned terms relate to motor vehicles, railroad cars, or other means of land transportation or wareshouses. A vessel upon the navigable waters is the essential ingredient to "maritime employment" and to those who perform "longshoring operations." This is further demonstrated in Victory Carriers, Inc. v Law, 404 US 202 at 210 and 212 wherein the Supreme Court tied longshoremen to vessels by stating:

> " No case in this Court has sustained the application of maritime law to the kind of accident (shoreside accident, shoreside equipment) that occurred in this case. State Industrial Comm'n v. Nordenholt Corp., 259 U.S. 263, 66 L.Ed. 933, 42 S.Ct. 473, 21 ALR 1013 (1922), has not been overruled. There, the Court held that compensation for a longshoreman injured when he slipped on a dock while stacking bags of cement

that had been unloaded from a ship was governed by local law, not federal maritime law."

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" That longshoremen injured on the pier in the course of loading or unloading a vessel are legally distinguished from longshoremen performing similar services on the ship is neither a recent development nor particularly paradoxical."

At most, the 1972 amendment to section 2(3) of the LHWCA was intended only to extend to longshoremen on the pier in the course of loading or unloading a vessel the same coverage and benefits applicable to fellow longshoremen performing similar services on the ship.

C. A Uniform Compensation System

In most ports in the United States the loading, unloading of vessels and movement of cargo between the vessel and the "point of rest" is performed by longshoremen employed by stevedore companies, and in the performance of that activity those longshoremen are now covered by the LHWCA, as amended in 1972.

Any handling, movement or loading and unloading of cargoes to rail cars, trucks or other inland conveyances is performed by terminal warehouse, or yard employees (sometimes called "shortshoremen") who are in the employ of marine terminal operators.

Stated another way, the Federal Maritime Commission, which under the Shipping Act of 1916 (46 USC 801 et seq.) regulates the economic functions of marine terminal operators, has stated as to breakbulk cargoes that:

" point of rest shall be defined as that area on the terminal facility which is assigned for the receipt of inbound cargo from the ship and from which inbound cargo may be delivered to the consignee, and that area which is assigned for the receipt of outbound cargo from shippers for vessel loading. " [46 CFR 533.6(c)]

It is quite clear then that in 1972 the Congress, the Secretary of Labor, the regulatory agency having jurisdiction over maritime affairs, and the industry all were fully aware of, and long recognized, that there is a sharp line separating longshoring functions from marine terminal functions. To the former the Congress intended to apply the LHWCA, and to the latter it did not.

The services performed by marine terminal operators, including rail car and truck unloading, storage of cargo, issuance of dock receipts, container repair and the like are usually charged against the cargo or to the party who requests the service. Those services are defined and the charges therefore are stated in marine terminal tariffs filed with the Federal Maritime Commission. On the other hand, longshore functions performed by a stevedore company are rendered only to the vessel, are charged to the vessel or its agents, and are not published in any tariff filed with the Federal Maritime Commission. Not only are the functions different, but the risks incurred, or likely to be incurred, are substantially different. This the Congress recognized when it drew the line of coverage between the LHWCA and applicable state laws at the same line the maritime industry traditionally has drawn between longshore employment and marine terminal operator function -- the point of rest.

(1) A Stevedore Is Not A Marine Terminal Operator - As we have pointed out above, there is an historic separation of functions between a stevedore

who employs longshore labor and a marine terminal operator who employs other labor. On the other hand, the terminal operator handles it for the account of the cargo owner in assisting it in delivery to or receipt from the vessel. The terminal operator in effect serves the general public, and the stevedore renders service to steamship companies.

(2) Single Employer - Dual Functions - In some ports the same corporate entity may engage in both occupations. In many, not all, ports the labor that performs both functions is derived from the same union. However, in many ports union members who are employed as longshoremen are in one local of the union, and workers engaged as terminal or warehouse employees are members of another local often at different pay scales. The employer who employs both types of worker maintains separate payrolls for each type of employment, and in many port areas there are separate union-management labor contracts (one for warehousemen and one for longshoremen) governing the scale of wages and work rules with respect to each function. Thus, even the unions recognize that there exists a line of demarcation between the functions of longshore operations and terminal/warehouse operations. Again, it was the intent of the Congress not to extend the coverage of the LHWCA beyond that historic line of demarcation.

(3) Two Different Employers - There are ports in the United States in which the terminal operator and the contract stevedore, or stevedores, are separate entities. See Adkins, supra as to petitioner Maritime Terminals, Inc. In such cases a private marine terminal company or a public port

entity performs all of the marine terminal functions, including acceptance of cargo from or delivering cargo to the stevedore engaged by the vessel to unload or load its cargo.

There are several ports in the United States in which the stevedore employer of longshore labor is a private concern and the marine terminal operations are performed by state or municipal bodies, such as state port authorities, harbor commission, etc... I.L.A. v North Carolina Ports Authority, 463 F.2d 1 (CA4-1972) cert. den. 409 US 982 (1972). In these instances the line of demarcation between marine terminal operations and stevedore operations becomes even sharper. The terminal employees in these situations are state or municipal employees, paid from public funds, and may or may not be members of any organized union. However, by statute, those employees are not covered by the LHWCA as they are specifically excluded [Section 3(a)(2), 33 USC 903(a)(2)]. Bagrowski v American Export Isbrandtsen Line, et al. 305 F. Supp. 432 (USDC, ED Wis 1969) reversed on other grounds 440 F.2d 502 (CA7-1970).

The situation has existed for years in many areas of the country, and the Congress was well aware of it when the Committees state (pages 11 and 13 of their respective reports) that:

> " The intent of the Committee is to permit a uniform compensation system to apply to employees who would otherwise be covered by this Act for part of their activity."

The Congress simply meant that the 1972 amendments only reached longshoremen and not marine terminal employees, regardless of who their employer may happen to be, private or public.

The NAS does not believe that Congress intended the forced demise of the private marine terminal operator or that public ports which perform their own marine terminal operations, and there are many, should have a substantial cost advantage because of federal workers' compensations costs. Specifically, marine terminals in most of the ports within the jurisdiction of this Court are operated by private enterprise, and if the full brunt of the LHWCA is brought further inland than the "point of rest" the private operator would be subject to increased LHWCA benefit payments and insurance premiums. On the other hand, bringing the LHWCA shoreward of the "point of rest" will have no such impact on ports to the South and West, as most are operated by public authorities which are specifically exempted from the LHWCA. 1/

It is no secret that cargoes are being diverted away from privately operated ports, such as New York, because of various cost disadvantages. By extending the LHWCA shoreward of the "point of rest" those cost disadvantages are further aggravated, and any semblance of the uniformity intended by the Congress would be destroyed. This the Fourth Circuit recognized in Adkins, supra because it was well aware of the fact that some ports within its jurisdiction would have received an unintended cost advantage, and one rule would have been applied to private operators and another to public operators. The

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1/ Some ports at which state or municipal employees perform marine terminal operations are: Camden, N.J.; Providence, R.I.; Charleston, S.C.; Jacksonville, Fla.; Pensacola, Fla.; Wilmington and Morehead City, N.C.; Savannah, Ga.; all Texas ports except Houston; Portland, Ore.; Sacramento, Cal.; Mobile, Ala.

NAS submits that the Congress was well aware of this situation and deliberately drew the state-federal jurisdictional line at the "point of rest" so that all stevedores in all ports, and all terminal operators in all ports would be treated exactly the same, and a uniform federal compensation system would exist.

D. Union Membership Is Irrelevant As To Status

It has been argued that membership in a union which includes the word "longshoreman" in its name (such as International Longshoreman's and Warehouseman's Union - the ILWU) means that every union member is a longshoreman working at longshoring operations. Obviously, as to the Pacific Coast based ILWU that argument cannot realistically be made as its name recognizes that some of its members are longshoremen and some are warehousemen. The membership of the ILA is similarly divided by occupation even if its official name does not so admit.

These two unions supply the overwhelming majority of workers employed by stevedores and marine terminal operators in the United States. However, in some ports longshoremen and marine terminal workers are members of the Brotherhood of Teamsters and the United Steelworkers of America unions. Are the latter "teamsters", "steelworkers", or "longshoremen"? Is a member of the United Steelworkers who sails on vessels of U.S. Great Lakes bulk carriers a "steelworker" or a "seaman"?

We submit that it is the occupation for which the man is employed that determines whether he is performing the statutory function of longshoring

operations and not the style of the particular union of which he is a member. Longshoremen work for stevedores. Terminal workers or warehousemen work for terminal operators. The work of stevedores is the loading and unloading of ships, Intercontinental Container Transport Corp. v New York Shipping Association 426 F.2d 884 (CA2-1970). The traditional work of longshoremen has been to load and unload ships, International Longshoremen's Ass'n. et al., 221 NLRB No. 144, decided December 9, 1975.

Agreements in labor-management collective bargaining contracts which expand the scope of work subject to those contracts in no way change the functions of the employee nor convert the occupation involved from warehousing, truck loading, rail car loading, machinery repair, etc.. only because the work is to be performed by members of a union, some of whose members may also be employed to load and unload ships. In similar vein, when steel company owned vessels employ members of the Steelworkers Union the occupation of "seaman" was not thereby converted to a "steelworker", and "steelworkers" thus employed are entitled to the same benefits the law provides for seamen who are members of recognized "seamen's unions".

We agree with the Fourth Circuit in Adkins, supra that provisions in collective bargaining agreements which expand the union's work jurisdiction do not change the law as to what is loading and unloading a vessel. The jurisdictional disputes before this Court concerning the ILA and the New York Shipping Association are of historical interest indeed, but they have no bearing whatsoever on the LHWCA and the matters involved in this

proceeding.

E. The Standing Of The Director, OWCP

Finally, the NAS feels constrained to again strongly urge, as it successfully did in Adkins, supra, that the Director is an inappropriate party to this action and any other similar proceeding before the Benefits Review Board or the U.S. Courts of Appeals. Claims for benefits under the LHWCA are strictly private matters between the claimant and his employer or his employer's insurance carrier. The Director's only duties are to administer the LHWCA (Employment Standards Order No. 2-75, Department of Labor, 40 Federal Register 56743) pursuant to delegated authority from the Secretary of Labor and Assistant Secretary of Labor for Employment Standards.

The Director is simply an administrator who does not even have authority to determine when, how, or in what manner he will be represented by counsel, as those decisions are exclusively those of the Solicitor of Labor (Secretary of Labor Order 16-17, 40 Federal Register 55913). Prior Departmental Orders to the same effect published in 1974 appear at 39 Federal Register 34722 and 34723.

To establish further the inappropriateness of the argument that the Director is a necessary party whose ministerial duties require his presence in this type of litigation, we must point out that even if the Director were a party to the litigation, as was unsuccessfully attempted in the Fourth Circuit in the Adkins case, the Solicitor of Labor would instruct the Director

to disregard Court decisions with which the Solicitor disagreed.

Set forth in the appendix to this brief are copies of Department letters obtained pursuant to the Freedom of Information Act, 5 USC 522 et seq. which were written immediately after the Fourth Circuit decided the Adkins case contrary to the Solicitor's position. The very next day, December 23, 1975, the Solicitor directed the Director to inform all of field subordinates, the Deputy Commissioners, to disregard the Court's decision. This the Director promptly did on the same day, and on January 8, 1976 the Associate Director "emphasized again" that the Department of Labor would not follow the decision of the U. S. Court of Appeals for the Fourth Circuit.

Needless to say, the NAS is shocked by the Department's actions which appear to us to be in blatant disregard of the judicial system of this nation, and we find it extremely difficult to explain why private citizens and corporations must obey the law and the U.S. government does not. As far as we can determine the Deputy Commissioner who functions within the states over which the Fourth Circuit has jurisdiction has received no instructions not given to other Deputy Commissioners even though, under our understanding of American jurisprudence, administrative agencies are bound by the decisions of U.S. Circuit Courts of Appeals unless those decisions are reversed by higher authority. That authority, we submit, is the U.S. Supreme Court, and not the Solicitor of Labor.

However, if the Court decides that the Director is properly before it,

we urge the Court to impress upon the Director that he must obey the mandate of this Court, and not a memorandum of the Solicitor of Labor.

But our problem is not limited only to the Director's actions. The Benefits Review Board, one of whose decisions is under appeal here, has also elected to disregard the decision of the Fourth Circuit in the Adkins case, by simply stating it believes it knows more about the law and its legislative history than do federal Courts.

In the case of Bradshaw v J.A. McCarthy,Inc., BRB Nos. 75-209, 209-A and 209-B, published at 3 BRBS 195 (January 26, 1973) the Board had this to say at page 198:

> " The Board is well aware of the restrictive interpretation given the status requirement by the Fourth Circuit Court of Appeals in the recent case of I.T.O. Corporation of Baltimore v. Adkins, Nos. 75-1051, 75-1075, 75-1088, 75-1196 (4th Cir. Dec. 22, 1975). However, we are of the opinion that our interpretation with regard to coverage is more in keeping with the amended statute and the legislative history, and we will continue to follow the line of reasoning developed in previous decisions and reiterated in this case." (Citations omitted.)

These actions of the Department of Labor taken in defiance of Court decisions cause members of the NAS irreparable injury as there is no way that they can recover the compensation payments erroneously ordered to be paid. Those payments must continue until a U.S. Court of Appeals stays the order of the BRB, and in view of recent history one cannot really expect the Department of Labor to honor such an order if the Solicitor disagreed with it.

The NAS and its member companies are thus compelled to contest each and every adverse ruling of the BRB in each and every Circuit Court of

Appeals in the United States, and unless this or some other Court finally orders the Department of Labor to follow the mandate of the Court the NAS and its members can never be sure that the litigation will ever end.

So while we still contend that the Director has no place in matters pending before the BRB of this Court, we welcome his presence in this proceeding if only for the purpose of this Court specifically ordering him to obey its mandate, whatever it may be, and not the instructions or advices of the Solicitor who will disagree with what we hope this Court's decision will be in these matters.

6. CONCLUSION

Carmelo Blundo (No. 76-4249) was working as a "checker" with other employees engaged in unloading the contents of a container which had been delivered to his workplace by truck. No vessel was involved in Mr. Blundo's accident. He was engaged in assisting the further transshipment of merchandise, and was not the "checker" "directly engaged in the loading and unloading functions" which Congress intended to be covered by the LHWCA. He was engaged in a totally shore-based occupation performing the shore-based functions of unloading merchandise from a motor carrier transported container at a facility intended to service such vehicles. The Benefits Review Board was in error in awarding Mr. Blundo LHWCA benefits and its award must be reversed.

Ralph Caputo (No. 75-4009) was loading a truck. He was in the truck at the time of his injury. He was performing the function of truck loading,

and was neither hired nor performing as a longshoreman loading or unloading a vessel. He was engaged in picking up stored cargo for further transshipment - an activity Congress expressly excluded from LHWCA coverage. (S. Rept. 92-1125, supra at pg. 13.) The Benefits Review Board erroneously found Mr. Caputo entitled to federal LHWCA benefits, and this Court must reverse that finding.

Anthony Dellaventura (No. 75-4042) like Mr. Caputo was loading a truck. The coffee bags which Mr. Dellaventura was handling had been on the pier for over 133 days. He clearly was neither engaged in longshoring operations nor maritime employment at the time of his injury. The decision of the BRB is clearly wrong and must be reversed.

Mr. Spataro (No. 75-4220) was preparing to unload a container some 23 days after it had been unloaded from a ship. He was injured at a truck loading platform, and was neither engaged in longshoring operations nor maritime employment at the time. The decision of the BRB is clearly wrong and must be reversed.

Mr. Scafiddi (No. 75-4043) like Mr. Spataro was preparing to unload a container at a truck loading platform at some undisclosed time after the container had been waterborne. As in the case of Mr. Spataro, Mr. Scafiddi was engaged in the land-based operation of truck unloading unrelated to longshoring or maritime employment. The decision of the BRB in that matter is wrong and must be reversed.

Congress did not intend, and did not by mistake, "---- cover employees

who are not engaged in loading, unloading, repairing, or building a vessel, just because they are injured in an area adjoining navigable waters used for such activity" (S. Rept. 92-1125, pg. 13).

Neither did the Congress intend to cover employees of terminal operators who might be performing the same truck or rail car loading or unloading as a truck or railroad company employee in further transshipment of cargoes. Congress did not intend to extend federal LHWCA benefits to "checkers" assisting anyone in loading or unloading trucks, rail cars, or containers which at one time may have been unloaded from or might at some future time be loaded onto a vessel by longshoremen employed by a stevedore.

While some of the claimants below may have been injured on property adjoining the navigable waters none of them was injured while loading or unloading a vessel in the performance of longshoring operations. Thus, all having failed the status requirement set forth by the Congress, none is eligible for federal LHWCA benefits. The NAS urges this Court to reverse the findings and orders of the Benefits Review Board and to set aside the compensation orders issued by the Benefits Review Board.

Respectfully submitted,

Thomas D. Wilcox
General Counsel
National Association of Stevedores
919 Eighteenth Street, N.W.
Washington, D. C. 20006
(202) 296-2810

APPENDIX

processed under Privacy Act or Freedom of Information Act procedures involves several considerations. For example, while agencies have been encouraged to reply to requests for access under the Privacy Act within ten days wherever practicable, consistent with the Freedom of Information Act (FOIA), the Privacy Act does not establish time limits for responding to requests for access. (See discussion of subsection (d)(1).) The Privacy Act also does not require an administrative appeal on denial of access comparable to that under FOIA although agencies are encouraged to permit individuals to request an administrative review of initial denials of access to avoid, where possible, the need for unnecessary judicial action. It can also be argued that requests filed under the Privacy Act can be expected to be specific as to the system of records to which access is sought whereas agencies are required to respond to an FOIA request only if it 'reasonably describes' the records sought. Further, the Freedom of Information Act permits charging of fees for search as well as the making of copies while the Privacy Act permits charging only for the direct cost of making a copy upon request.

"It is our view that agencies should treat requests by individuals for information pertaining to themselves which specify either the FOIA or the Privacy Act (but not both) under the procedures established pursuant to the Act specified in the request. When the request specifies, and may be processed under, both the FOIA and the Privacy Act, or specifies neither Act, Privacy Act procedures should be employed. The individual should be advised, however, that the agency has elected to use Privacy Act procedures, of the existence and the general effect of the Freedom of Information Act, and of the differences, if any, between the agency's procedures under the two Acts (e.g., fees, time limits, access and appeals.

"The net effect of this approach should be to assure the individuals do not, as a consequence of the Privacy Act, have less access to information pertaining to themselves than they had prior to its enactment."

[FR Doc.75-32297 Filed 12-3-75;8:45 am]

OFFICE OF SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

[Doc. No. 301-5]

GREAT WESTERN MALTING CO.

Complaint; Correction

FR Doc. 75-31395 appearing at page 54311 in the FEDERAL REGISTER for Friday, November 21, 1975 is corrected as follows: Line 12 from the top of the center column on page 54312 should read "is estimated to be at least $4,000,000, an—"

MORTON POMERANZ,
Chairman, Section 301 Committee, Office of Special Representative for Trade Negotiations.

[FR Doc.75-32639 Filed 12-3-75;8:45 am]

DEPARTMENT OF LABOR

Office of the Assistant Secretary of Labor for Employment Standards

[Employment Standards Order No. 2-75]

ASSISTANT SECRETARY FOR EMPLOYMENT STANDARDS

Redelegation of Authority and Reassignment of Responsibility Assigned

1. *Purpose.* This Order redelegates authority and reassigns responsibility (a) within the Office of the Assistant Secretary; and to (b) the Wage-Hour Administrator; (c) the Director of the Women's Bureau; (d) the Director of the Office of Workers' Compensation Programs; (e) the Director of the Office of Federal Contract Compliance Programs.

2. *Background.* A. Secretary's Order No. 16-75 and 27-72 delegated authority and assigned responsibility for certain functions to the Assistant Secretary for Employment Standards with the authority to redelegate.

B. Secretary's Order No. 18-67, 32 FR 12979, formerly identified as General Order No. 46 (Revised), delegated and assigned to the Director of the Bureau of Employees' Compensation authority and responsibility for performance of the functions of the Secretary of Labor under the Federal Employees' Compensation Act, 5 U.S.C. 8101 et seq., as amended and extended (except 8149 as it applied to the Employees' Compensation Appeals Board), and under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901 et seq., as amended and extended, to be performed under the general direction and control of the Assistant Secretary for Labor-Management Relations. The overall responsibility for the authority delegated to the Director of the Bureau by Secretary's Order No. 18-67 was subsequently assigned successively to the Assistant Secretary for Wage and Labor Standards (see United States Government Organization Manual, 1970/1971, p. 320) and to the Assistant Secretary for Workplace Standards (Secretary's Order No. 19-70, 36 FR 304) without change in the operational responsibilities of the Bureau of Employees Compensation (Workplace Standards Administration, Description of Organization, 36 FR 307).

C. Secretary of Labor's Order 13-71, 36 FR 8755, established the Employment Standards Administration to perform the functions of the Department with respect to employment standards program. The Assistant Secretary for Employment Standards was therein delegated the authority and assigned responsibility for carrying out such programs. That Order further provided that the Employment Standards Administration was to be headed by a Deputy Assistant Secretary/Administrator who was to report to the Assistant Secretary for Employment Standards and was to act for the Assistant Secretary in his absence. Among the employment standards programs for which the responsibility was thus delegated were:

1. The Federal Employees' Compensation Act, as amended and extended (5 U.S.C. 8101 et seq., except 8149 as it applied to the Employees' Compensation Appeals Board).

2. The Longshoremen's and Harbor Workers' Compensation Act, as amended and extended.

3. Part C of Title IV (Black Lung Benefits) of the Federal Coal Mine Health and Safety Act of 1969.

D. Secretary of Labor's Order 15-71, 36 FR 8755, set forth in detail the redelegation of authority to the Deputy Assistant Secretary for Employment Standards Administration.

E. Secretary of Labor's Order 38-72, 38 FR 90, made provisions for the Benefits Review Board established by Pub. L. 92-576, 86 Stat. 1251, as a quasi-judicial body of the first appeal under the Longshoremen's and Harbor Workers' Act, as amended, 33 U.S.C. 901 et seq.; the Defense Base Act, 42 U.S.C. 1651 et seq.; the District of Columbia Workmen's Compensation Act, 36 D.C. Code 501 et seq.; the Outer Continental Shelf Lands Act, 10 U.S.C. 1721; the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. 1871 et seq.; and Title IV, section 415 and Part C, of the Federal Coal Mine Health and Safety Act of 1969, as amended, by the Black Lung Benefits Act of 1972, 30 U.S.C. 901 et seq.

F. Secretary of Labor's Order 16-73, 38 FR 19130, delegated authority to the Assistant Secretary for Employment Standards for the performance of the functions assigned to the Secretary of Labor pursuant to Parts B and C of Title IV of the Federal Coal Mine Health and Safety Act of 1969 as amended, with the exception of the functions vested with the Benefits Review Board by Secretary of Labor's Order 38-72.

G. Employment Standards Order 2-74 redelegated to the Director, Office of Workers' Compensation Programs, the authority and reassigned the responsibility vested in the Assistant Secretary for Employment Standards regarding workers' compensation programs and the performance of functions assigned to the Assistant Secretary pursuant to Title IV, Section 415 and Part C, of the Federal Coal Mine Health and Safety Act of 1969, as amended.

H. Secretary of Labor's Order dated September 23, 1974 (39 FR 34723) revoked his prior Order 18-67, and the last sentence of paragraph 3 of Secretary's Order 13-71.

I. Secretary's Order 16-75 cancelled and replaced Secretary's Order 13-71 and incorporated the delegation contained in the Secretary's Order 16-73 and cancelled that Order.

3. *Redelegation of authority and reassignment of responsibility.* The authority and responsibility delegated and assigned by the Secretary of Labor to the Assistant Secretary for Employment Standards for carrying out Employment Standards programs and activities is redelegated and reassigned, except as hereinafter provided, as follows:

A. The Office of the Assistant Secretary of Employment Standards.

1. The Deputy Assistant Secretary for Employment Standards is hereby redelegated authority to act on all matters within the Assistant Secretary's delegation.

2. The Director of the Office of Program Development and Accountability shall report to the Assistant Secretary and is responsible for all program development and accountability activities, including developing plans, policies and procedures for the functions of the program planning, policy analysis and review, budgeting and financial management, accountability review, legislative analysis, research, evaluation, allocation of resources, and information and analysis of State employment standards.

3. The Director of the Office of Administrative Management shall report to the Assistant Secretary and is responsible for all administrative and management activities, including developing plans, policies and procedures, for the functions of employee development, personnel and employee management relations, position management information system, mobilization planning activities delegated to Employment Standards Administration in Secretary's Order 27-72, and general services such as procurement and supply management.

4. Assistant Regional Directors for Employment Standards are responsible for carrying out the Assistant Secretary's responsibilities for all Employment Standards programs within their geographic jurisdiction. Assistant Regional Directors report directly to the Assistant Secretary, represent the Assistant Secretary within their jurisdiction, and are the principal operating managers in the field.

5. The above redelegations made within the Office of the Assistant Secretary shall be carried out consistent with the redelegations made to the Wage-Hour Administrator; the Director of the Women's Bureau; the Director, Office of Federal Contract Compliance Programs; the Director, Office of Workers' Compensation Programs, and within the Office of the Assistant Secretary.

B. The Office of the Wage-Hour Administrator.

1. The Wage-Hour Administrator shall report to the Assistant Secretary and is hereby delegated authority, except as hereinafter provided, for carrying out the programs and activities delegated to the Assistant Secretary under:

a. Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 et seq., including the issuance of child labor hazardous occupation orders and other regulations concerning child labor standards;

b. The Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35 et seq.;

c. The Service Contracts Act of 1965, as amended, 41 U.S.C. et seq.;

d. The Davis-Bacon Act, as amended, 40 U.S.C. 276, and any laws now existing, or subsequently enacted, providing for prevailing wage findings by the Secretary of Labor in accordance with or pursuant to the Davis-Bacon Act; the Copeland Act, 40 U.S.C. 276, Reorganization Plan No. 14 of 1950; and the Tennessee Valley Authority Act, 16 U.S.C. 831;

e. The Contract Work Hours and Safety Act, as amended, 40 U.S.C. 327 et seq.;

f. Title III of the Consumer Credit Protection Act, 15 U.S.C. 1671 et seq.;

g. The Vocational Rehabilitation Act Amendments 1965, 20 U.S.C. 1241;

h. The Arts and Humanities Act of 1965, 20 U.S.C. 953;

i. The Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 301 et seq.;

j. The Farm Labor Contractor Registration Act of 1963, as amended, 29 U.S.C. 301 et seq;

k. Section 1450(i) of the Safe Drinking Water Act (Pub. L. 93-523);

l. Section 507 of the Federal Water Pollution Act (Pub. L. 87-88 as amended by 89-234);

m. Such additional Federal Acts as may from time to time confer upon the Secretary of Labor duties and responsibiilties similar to the Fair Labor Standards Act.

C. The Office of the Director of the Women's Bureau.

1. The Director of the Women's Bureau shall report to the Assistant Secretary and is hereby redelegated authority, except as hereinafter provided, for carrying out the programs and activities delegated to the Assistant Secretary under:

a. The Act of 1920 establishing a Women's Bureau (Pub. L. 66-259);

b. Executive Order 11126—as amended by Executive Order 11221—Status of Women.

D. The Office of the Director of Workers' Compensation Programs.

1. The Director of the Office of Workers' Compensation Programs shall report to the Assistant Secretary and is hereby redelegated authority, except as hereinafter provided, for carrying out the programs and activities delegated to the Assistant Secretary under:

a. The Federal Employees' Compensation Act, as amended and extended (5 U.S.C. 8101 et seq.), except 8149 as it applies to the Employees' Compensation Appeals Board.

b. The Longshoremen's and Harbor Workers' Compensation Act, as amended and extended, except 33 U.S.C. 921(b) as it pertains to the Benefits Review Board;

c. Title IV, Section 415 and Part C of the Federal Coal Mine Health and Safety Act of 1969, as amended.

E. The Office of the Director of Federal Contract Compliance Programs.

1. The Director of the Office of Federal Contract Compliance Programs shall report to the Assistant Secretary and is hereby delegated authority, except as hereinafter provided, for carrying out the programs and activities delegated to the Assistant Secretary under:

a. The Executive Order 11246, as amended by Executive Order 11375—Federal Contract Compliance.

b. Section 503 of the Rehabilitation Act of 1973, as amended, and Executive Order 11758.

c. The affirmative action requirements under Title V of the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended, 38 U.S.C. Section 2012.

F. The redelegation of authority contained in paragraphs 3 (B) through (E) above are to be performed consistent with the redelegations made within the Office of the Assistant Secretary in paragraph 3(a) above, except that the quasi-judicial line of adjudicatory authority and responsibility between the Director of the Office of Workers' Compensation Programs and the Deputy Commissioners or their subordinates in the OWCP District Offices in individual case actions under the laws enumerated in 3(D)(1)(a), (b) shall not be affected.

4. *Redelegation of Authority.* The authority delegated and the responsibility assigned by this Order may be redelegated and reassigned.

5. *Reservation of Authority.* The submission of reports and recommendations to the Department concerning the administration of Employment Standards programs shall be reserved to the Assistant Secretary for Employment Standards.

6. *Directives Affected.* Employment Standards Orders Nos. 1-74, 39 FR 33841; and 2-74, 39 FR 34722 are hereby cancelled. Secretary's Orders Nos. 15-71, 36 FR 8756; 20-70, 36 FR 305; 4-69, 34 FR 1202; 3-69 34 FR 1203; 2-69, 34 FR 1203; 26-68, 21-68, 34 FR 578; and 21-67, 32 FR 14802 are also hereby cancelled.

7. *Effective date.* This order is effective December 4, 1975.

Signed at Washington, D.C., this 26th day of November 1975.

BERNARD E. DELURY,
Assistant Secretary for Employment Standards.

[FR Doc.75-32717 Filed 12-3-75;8:45 am]

Office of the Secretary

[TA-W-354]

ALLEGHENY LUDLUM STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 21, 1975, the Department of Labor received a petition filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Allegheny Ludlum Steel Corporation, Watervliet, New York, a division of Allegheny Ludlum Industries, Pittsburgh, Pennsylvania (TA-W-354). Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with stainless steel bars, wire, rods and tubes, tool steel, produced by Allegheny Ludlum Steel Corporation or an appropriate subdivision thereof have contributed importantly to

[Secretary of Labor: Order No. 16–75]

EMPLOYMENT STANDARDS PROGRAMS

Delegation of Authority and Assignment of Responsibility for Employment Standards Programs

1. *Purpose.* To delegate authority and assign responsibility to the Assistant Secretary for Employment Standards.

2. *Directives Affected.* a. The authorities delegated herein are subject to the overall provisions of Secretary's Orders (S.O. 3–73, 27–73, and 24–74 pertaining to procurement and contracting authority; S.O. 27–72 pertaining to emergency preparedness and disaster relief; and departmental policies and procedures pertaining to administrative, organizational, and management processes.

b. Secretary's Orders 13–71, 14–71, 32–72, 16–73, 8–74, and delegation of authority dated September 23, 1974 (39 FR 34723) are canceled.

3. *Backyard.* Secretary's Order 13–71 established the Employment Standards Administration in the Department of Labor and delegated authority and assigned responsibility for certain employment standards programs. However, subsequent organizational changes and additional assigned statutory responsibilities necessitate the issuance of an updated delegation of authority.

4. *Delegation of Authority and Assignment of Responsibility.* a. *The Assistant Secretary for Employment Standards* is hereby delegated authority and assigned responsibility, except as hereinafter provided, for carrying out the employment standards policies, programs, and activities of the Department of Labor, including direction of the field programs and those functions to be performed by the Secretary of Labor under:

(1) The Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 et seq., including the issuance of child labor hazardous occupation orders and other regulations concerning child labor standards.

(2) The Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35 et seq., except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(3) The Service Contracts Act of 1965, as amended, 41 U.S.C. et seq., except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(4) The Davis-Bacon Act, as amended, and any laws now existing or subsequently enacted, providing for prevailing wage findings by the Secretary in accordance with or pursuant to the Davis-Bacon Act, as amended, 40 U.S.C. 276a; the Copeland Act, 40 U.S.C. [illegible] Reorganization Plan No. 14 of 1950; and the Tennessee Valley Authority Act, 16 U.S.C. 831.

(5) The Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 et seq., except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(6) Title III of the Consumer Credit Protection Act, 15 U.S.C. 1671 et seq.

(7) The Vocational Rehabilitation Act Amendments, 1965, 20 U.S.C. 1241.

(8) The Arts and Humanities Act of 1965, 20 U.S.C. 953, except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(9) The Federal Employees' Compensation Act, as amended and extended (5 U.S.C. 8101 et seq., except 8149 as it pertains to the Employees' Compensation Appeals Board).

(10) The Longshoremen's and Harbor Workers' Compensation Act, as amended and extended, except 33 U.S.C. 921(b) as it applies to the Benefits Review Board.

(11) Title IV, Section 415 and Part C, of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, 30 U.S.C. 901 et seq.

(12) The Act of 1920 establishing a Women's Bureau (P.L. 66–259).

(13) The Age Discrimination in Employment Act of 1967 (P.L. 90–202), except those provisions relating to studies and research delegated to the Assistant Secretary for Employment and Training.

(14) The Farm Labor Contractor Registration Act of 1963 (P.L. 88–582), except those provisions relating to the receipt of applications for registration and agreements with Federal or State agencies assigned to the Assistant Secretary for Employment and Training.

(15) The Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended, 38 U.S.C. 2012, except for those mandatory listing obligations already delegated to the Assistant Secretary for Employment and Training.

(16) Sections 501(a), 501(f), 502, and 503 of the Rehabilitation Act of 1973, as amended, (P.L. 93–112) and Executive Order 11758, except sections 501(b) and 504 of the Act delegated to the Assistant Secretary for Administration and Management; and except Section 504 of the Act as it applies to employment and training programs.

(17) Executive Order 1126—as amended by Executive Order 11221—Status of Women.

(18) Executive Order 11246—as amended by Executive Order 11375—Federal Contract Compliance.

(19) Section 1450(i) of the Safe Drinking Water Act (P.L. 93–523).

(20) Section 507 of the Federal Water Pollution Prevention and Control Act (P.L. 87–88, as amended by P.L. 89–234).

(21) Such additional Federal Acts as may from time to time confer upon the Secretary of Labor duties and responsibilities similar to the Fair Labor Standards Act, 29 U.S.C. 201 et seq., or the Davis-Bacon Act, as amended, 40 U.S.C. 276a–f, and related Acts.

b. In carrying out the authority and responsibility delegated under this Order, the Assistant Secretary for Employment Standards shall perform the above functions in accordance with existing governmental and departmental regulations.

c. *The Assistant Secretary for Employment Standards* is also delegated authority for making organizational changes within policies established by the Secretary.

d. *The Solicitor of Labor* shall have the responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutes and Executive Orders listed in paragraph 4a above. The bringing of legal proceedings under the statutes and Executive Orders listed in paragraph 4a above, the representation of the Secretary of Labor and/or other officials of the Department of Labor, and the determination of whether such proceedings or representation is appropriate in a given case are delegated exclusively to the Solicitor of Labor.

5. *Redelegation of Authority.* The authority and responsibility delegated to the Assistant Secretary for Employment Standards may be redelegated.

6. *Reservation of Authority.* a. Submission of reports and recommendations to the President and the Congress concerning the administration of statutes and Executive Orders listed in paragraph 4a above is reserved to the Secretary.

b. The jurisdiction of the Wage Appeals Board, as presently described in Secretary's Order 24–70 (36 FR 306) and its rules of practice (29 CFR Part 7) is reserved, and the Board shall be authorized to review decisions under this Order relating to the Davis-Bacon Act and related laws within the scope of its jurisdiction.

7. *Effective Date.* This Order is effective immediately.

Signed at Washington, D.C. this 21st day of November, 1975.

JOHN T. DUNLOP,
Secretary of Labor.

[FR Doc.75-32419 Filed 12-1-75;8:45 am]

[TA-W-333]

LUDLOW TYPOGRAPH CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 14, 1975 the Department of Labor received a petition filed under Section 221(e) of the Trade Act of 1974 ("the Act") by the International Union of Electrical, Radio and Machine Workers on behalf of the workers and former workers of Ludlow Typograph Company, Chicago, Illinois, a division of Ludlow Industries, Des Plaines, Illinois (TA–W–333). Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an invesitgation as provided in Section 221(a) of teh Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative

U.S. DEPARTMEN OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Office of Workers' Compensation Programs — Washington, D.C. 20211

File No.

EF

Thomas D. Wilcox
Executive Director and General Counsel
The National Association of Stevedores
919 Eighteenth Street, N. W.
Washington, D. C. 20006

Dear Mr. Wilcox:

I have received your letter of February 4, 1976, requesting under the Freedom of Information Act a copy of the operating manual used by the Office of Workers' Compensation Programs in administering the Longshoremen's and Harbor Workers' Compensation Act. A copy of the Longshore (LHWCA) Procedure Manual, consisting of 165 pages of text and indices, is enclosed. The fee for this material is $16.50, which may be paid by check made payable to Office of Workers' Compensation Programs, Longshore, and directed to my attention.

Also, pursuant to your request, copies are enclosed of memoranda from the National Office of the Office of Workers' Compensation Programs to the Deputy Commissioners, transmitting information and instructions with respect to the Department of Labor's position on the shoreside coverage of the Longshoremen's Act following the decision of the Fourth Circuit Court of Appeals in the matter of ITO Corporation of Baltimore et al. v. William T. Adkins et al. There is no fee for these documents.

Sincerely,

John E. Stocker
JOHN E. STOCKER
Associate Director for
Longshore and Harbor
Workers' Compensation

Enclosures

Include your address, ZIP code, and file number on all correspondence

January 8, 1976

ECL

DOL Action in Case of William T. Adkins and Others,
U. S. Court of Appeals

ALL DEPUTY COMMISSIONERS (LHWCA)

Attached is a copy of the Department's Motion to Enlarge Time Within Which To File a Petition For Rehearing and Suggestion For Rehearing En Banc in the case of William T. Adkins. We have been advised that the Motion was granted and the time extended to January 19 for filing the petition.

We will keep you advised of any developments in this matter. In the meantime, it is emphasized again that the Department's position on the subject of coverage of the Act remains unchanged.

JOHN E. STOCKER
Associate Director for
Longshore and Harbor
Workers' Compensation

Attachment

cc: ECL(2)
Reading File
ECL:JEStocker:nls 1/8/76

U.S. DEPARTMENT OF LABOR
Employment Standards Administration
Office of Workers' Compensation Programs
Washington, D.C. 20211

Date: DEC 23 1975

Reply to
Attn of: EC

Subject: Decision in case of I.T.O. Corporation v. BRB, William T. Adkins, and International Longshoremen's Association, No. 75-1051, U.S. Court of Appeals, Fourth Circuit

To: ALL DEPUTY COMMISSIONERS (LHWCA)

Attached is a copy of the decision of the U.S. Court of Appeals for the Fourth Circuit in the above referenced case. This decision reversed the Benefits Review Board's decision involving coverage provisions of section 3(a) of the LHWCA.

Also attached is a copy of a memorandum from the Associate Solicitor to the Director, OWCP, stating that the Department has not changed its position regarding shoreside coverage. We will advise you promptly of any developments in this regard.

Pending further notification from this Office, please refer any written inquiries received concerning this decision and its effect on DOL's position to the Associate Director, DLHWC.

HERBERT A. DOYLE, JR.
Director, Office of
Workers' Compensation
Programs

Attachments

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR

December 23, 1975

CE

Subject: Courts of Appeals' Decisions under the Longshoremen's Act

To: Herbert A. Doyle
Director, OWCP

Attached for your information is a copy of the adverse decision rendered by the Fourth Circuit in the cases entitled I.T.O. Corporation of Baltimore v. Benefits Review Board and Adkins (No. 75-1051); Maritime Terminals, Inc. v. Secretary of Labor and Brown (No. 75-1075); and Maritime Terminals, Inc. v. Harris (No. 75-1196). This decision, dated December 22, 1975, reversed Benefits Review Board decisions involving the coverage provisions of section 3(a) of the Act. This office is considering whether it would be appropriate to request the court to rehear these cases en banc.

Also attached is a copy of the Ninth Circuit's decision in Weyerhaeuser Co. v. Gilmore (No. 74-3384).

In distributing these decisions to OWCP district offices, the deputy commissioners should be specifically advised that the Department has not changed its position regarding shoreside coverage.

Laurie M. Streeter
Associate Solicitor
for Employee Benefits

Enclosures